

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
	:	
v.	:	NO. 98-572- M
	:	
	:	
ROBERT BOGUE,	:	
	:	
Petitioner	:	

GREEN, S.J.

MEMORANDUM-ORDER

Presently before the Court is a Rule 59(e) application to alter or amend the Order filed by this Court on October 13, 1998, denying Robert Bogue's petition for a writ of habeas corpus. For the reasons which follow, the motion will be denied.

Robert Bogue moves to amend or alter judgment on four grounds: (1) there was insufficient evidence to find probable cause supporting his drug-trafficking conviction in France; (2) the nine year lapse in time between the French warrant issued for Petitioner's arrest and the French government's petition to extradite has severely prejudiced his rights of fundamental fairness and due process of law; (3) since the statute of limitations has expired, he is immune from prosecution in France and cannot be extradited in accordance with Article VI.3 of the extradition treaty between France and the United States; and (4) if extradited, he will be subject to prolonged pretrial detention and the same French procedure that convicted him in absentia in 1990. Reviewing these arguments, as set forth in Mr. Bogue's brief and supporting affidavits,

this Court finds no new facts or explanation of previously known facts that warrant amendment or alteration of the October 13, 1998 Order.

I. Probable Cause

A writ of habeas corpus does not issue if the Magistrate relied upon competent evidence sufficient to support the conclusion that a reasonable person would believe the petitioner guilty. In the instant case, the Extradition Magistrate determined that Mr. Bogue's conviction in absentia was sufficient to establish probable cause. In response to Mr. Bogue's repeated assertions that the Magistrate unreasonably relied on an in absentia conviction to find probable cause, this Court reiterates that a conviction, although obtained in absentia, provides sufficient evidence of criminality to satisfy the probable cause requirements of 18 U.S.C. § 3184. Gouveia v. Vokes, 800 F. Supp. 241, 245 (E.D.Pa. 1992). Therefore, the Magistrate's finding of probable cause was based upon competent evidence and will not be disturbed.¹

II. Delay in Extradition Proceedings

Mr. Bogue claims that the delay from the underlying incident in 1986 to the present has severely prejudiced his rights of fundamental fairness and due process of law. Notwithstanding Mr. Bogue's potential hardships, this Court concludes that the Constitution does not impose on

¹ In finding that the Magistrate relied upon competent evidence sufficient to support the conclusion that a reasonable person would believe the petitioner guilty, this Court also recognized that statements of co-conspirators, in specialized circumstances, can be admitted into evidence. While this Court did not assume that Mr. Erario's statements were made in furtherance of the drug-trafficking conspiracy, it did use the 801(d)(1)(a) analogy to show that consideration of evidence obtained from a co-conspirator, does not automatically offend the fundamental decency that accompanies due process protections.

The evidence upon which a Magistrate relies to find probable cause in an extradition hearing need not meet the standards for admissibility at trial. Thus, American law has resolved against Mr. Bogue any claim that there is a violation of Constitutional rights from the admission of hearsay evidence at an extradition hearing which otherwise may not be admitted at trial.

foreign governments the obligation to act speedily in seeking a fugitive's extradition from the United States. See, e.g. Kamrin v. U.S., 725 F.2d 1225, 1227-28 (9th Cir. 1984), cert. denied, 469 U.S. 817 (1984).

Moreover, upon extradition, Mr. Bogue is free to elect a new trial in France. Should he elect to reopen his French conviction, he may request that all of the procedural irregularities, to which he now complains, be addressed before a French tribunal.

III. The Expiration of the French Statute of Limitations

The French government issued an arrest warrant for Mr. Bogue in 1986. Spanish law enforcement agents served the warrant upon Mr. Bogue at his residence in Spain. In the same year, Mr. Bogue was arrested pursuant to the French warrant and detained in a Spanish prison pending extradition to France. Thereafter, the Spanish government released Mr. Bogue on bond. Mr. Bogue then left Spain and returned to the United States. While Mr. Bogue remained incarcerated in the United States on unrelated drug charges, the French government obtained a conviction in absentia, against him in 1990.

Article VI of the 1909 Convention to the Extradition Treaty between the United States and France provides that "Extradition shall not be granted [w]hen the person claimed has, according to the law of either the requesting or the requested Party, become immune by the reason of lapse of time from prosecution or punishment." Mr. Bogue now contends that he is immune from extradition because the French Criminal Code required the government to extradite, prosecute, and convict him within the five year statutory period. Since the French government did not attempt his extradition from the United States until 1998, he contends that the statute of limitations prevents his extradition.

In 1987, however, France revised the Criminal Code. These revisions expanded the period of limitations for the offense under which Mr. Bogue has been convicted to twenty years. Citing Jamil v. France, European Courts of Human Rights, Strasbourg (8 June 1995), Mr. Bogue claims that the twenty year limitations period cannot be retrospectively applied to his case.

As stated earlier, Mr. Bogue was tried and convicted within the five-year statutory period in effect in France at the time of his offense. Therefore, since the conviction occurred within the statutory period for the offense, no statute of limitations issue exists under American law.

Mr. Bogue argues that the United States constitution protects him from retrospective application of the twenty year statute of limitations in France. This Court disagrees. Safeguards equivalent to those constitutionally required by American law are not automatically applicable to foreign governments seeking the extradition of an American citizen pursuant to an extradition treaty. See Yapp v. Reno, 26 F.3d 1562, 1565(11th Cir. 1994). Therefore, whether the French government can apply the twenty year statute of limitations period retrospectively is a matter for the French courts.

Notwithstanding, this Court's decision to reject Mr. Bogue's immunity claims, Mr. Bogue is free to attempt to raise the immunity defense in the requesting country of France. Furthermore, this court's decision does not foreclose Mr. Bogue from making his immunity arguments to the Secretary of State, who exercises much broader discretion in international extradition cases than does the Federal Courts. See Yapp v. Reno, 26 F.3d 1562, 1568 (11th Cir. 1994).

IV. Prolonged Pretrial Detention in France

Mr. Bogue contends that he could be subject to prolonged pretrial detention before a

retrial in France occurs. Furthermore, a retrial in France would include the same “procedural deficiencies” that existed at his French trial in absentia. Since this Court does not find the procedures or punishment awaiting Mr. Bogue to be antipathetic of established traditions of decency and fairness, Mr. Bogue’s certification of extraditability will not be disturbed.

Mr. Bogue, however, is free to raise questions concerning what awaits him in the requesting country with the Secretary of State. The Secretary of State may decline to surrender a relator on any number of discretionary grounds and foreign police consideration. See 18 U.S.C. §3186. Therefore, Mr. Bogue’s arguments related to issues of his treatment while awaiting retrial in France, may best be addressed by the Secretary of State. See United States v. Lui Kin-Hong, 110 F. 3d 103, 110 (1st Cir. 1997).

This court has carefully considered the factors which would favor granting Mr. Bogue’s writ of habeas corpus and concludes that the Magistrate’s Order certifying extradition was proper. Therefore, the Rule 59(e) application to alter or amend the order denying Robert Bogue’s writ of habeas corpus is denied. An appropriate order follows.

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ROBERT BOGUE,	:	
	:	

ORDER

AND NOW, on this 11th day of December, 1998, upon consideration of Petitioner's Application to Alter or Amend Judgment under Rule 59(e) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED and DECREED that Petitioner's Motion is DENIED.

BY THE COURT,

CLIFFORD S. GREEN, S.J.